

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. RPU-02-9 (TF-02-498)
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**ORDER SUSPENDING PROPOSED TARIFF AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued September 30, 2002)

On September 24, 2002, Qwest Corporation (Qwest) filed a proposed tariff with the Utilities Board (Board) introducing what Qwest describes in its cover letter as "three-digit dialing N11 service." This service provides the end-user with the ability to dial a three-digit N11¹ code to connect to an information or referral service in which the general public may have an interest, as determined by the Federal Communications Commission (FCC). Qwest states that the FCC has determined that dialing 211 should connect the caller to health and community information services, 311 to non-emergency police and fire services, and 511 to road and traffic information. The proposed tariff is identified as TF-02-498.

The tariff sets forth the terms and conditions Qwest proposes to apply to public agencies and others who intend to receive these N11 telephone calls. The three N11 telephone numbers are set out as separate, but substantially similar, sections of

¹ In telephone parlance, the letter "N" can represent any numeral from 2 to 9, inclusive. However, for purposes of this docket, "N11 services" will mean 211, 311, and 511.

Qwest's Iowa Tariff No. 1, with only minor differences among the services. Qwest proposes nonrecurring charges of \$300 per "point-to number," \$30 per central office switch translated, and \$0.02 per call routed to the service provider's telephone number. These charges would apply to the N11 services identified in the proposed tariff.

The Board notes that Qwest filed a similar tariff (with somewhat higher charges) on June 14, 2001, identified as TF-01-177, which the Board docketed on June 28, 2001, as Docket No. RPU-01-8. On July 9, 2001, Qwest filed a motion to withdraw TF-01-177, saying that the issues described in the docketing order "are such that Qwest needs time to consider and evaluate whether the proposed tariff should be reconstructed as well as to consider what rate levels are appropriate." Qwest further stated that it would address its concerns as quickly as it could and that it would not unreasonably delay introduction of the services. The Board granted the motion to withdraw by order dated July 14, 2001.

The Board will suspend Qwest's proposed tariff for investigation because these services may be "basic communications services" for which the proposed tariff may be unlawful. Qwest currently operates in Iowa pursuant to a price regulation plan under Iowa Code § 476.97 (2001), approved by the Board in Docket No. RPU-98-4. The statute and price regulation plan divide Qwest's services into three categories: basic communications services, nonbasic communications services, and deregulated communications services. See Iowa Code § 476.96; Qwest price

regulation plan Sections III, IV, and V. Rates for basic communications services are indexed to inflation and productivity changes, see § 476.97(3)"a"(5). Rates for nonbasic services may be increased or decreased at the discretion of Qwest, subject to a restriction that the increase in Qwest's aggregate revenue-weighted nonbasic service prices cannot exceed 6 percent in any 12-month period. See Qwest price regulation plan, Section IV.C. Deregulated services are not subject to Board regulation, see Iowa Code § 476.1D.

The definition of "basic communications service" found in § 476.96(1) authorizes the Board to classify any two-way switched communications services as a basic communications service, consistent with community expectations and the public interest. In reviewing Qwest's proposal, it appears these N11 services might more appropriately be classified as basic communications services, along with 911, E-911, and dual party relay service (711) because they appear to have public interest features and they may not be available on a competitive basis.

The FCC found these N11 services to be imbued with a public interest, such that special dialing arrangements have been assigned nationally for these specific purposes. It is possible that the Board will make a similar finding.

Moreover, it appears these are not services that can be purchased on a competitive basis; for example, if a community information and referral service provider intends to receive all 211 calls in a specific geographic area, it appears the service provider would have to purchase 211 service from Qwest and from every

competitive local exchange carrier (CLEC) and wireless or cellular company serving the territory. If this is the case, and if 211 service is found to be a nonbasic communications service, then it appears Qwest could charge monopoly prices for this public service. Under these circumstances, it is possible that after hearing evidence and argument the Board will conclude that community expectations and the public interest require that these services be classified by rule as basic communications services. The parties to this docket will be asked to address this issue.

There is also a question concerning Qwest's proposed charges for these services. Typically, the charge for new, nonbasic communications services is not an important issue for Board review, as the services are likely to be optional or competitive services such that the Board can rely upon the marketplace to ensure the prices, terms, and conditions are reasonable. However, these services are closely associated with the public interest and may not be competitive. Moreover, if these services are classified by the Board as basic communications services, then it is possible that the costs associated with these services would be more appropriately recovered as an undefined part of Qwest's basic service rates, rather than as a separate charge to public-interest agencies such as police departments or health and community information services. The Board will ask that the parties to this proceeding also address the most appropriate mechanism for recovery of the costs associated with these services.

There may be other issues presented by the other terms and conditions proposed by Qwest. For example, for 211, 311, and 511 service, Sections 10.11.3.A.2.j, B.2.j, and C.2.j of the tariffs provide that if two or more subscribers for the service have a dispute regarding their geographic coverage, the matter will be referred to the Board. The Board is aware that in the FCC's "First Report and Order and Further Notice of Proposed Rulemaking" in CC Docket No. 92-105, In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, 12 FCC Rcd 5572 (1997) (the First Report and Order), the FCC stated that it would allow local exchange carriers (LECs), states, and Bellcore to continue to perform the N11 code administration functions that they performed prior to passage of the 96 Act, at least until further FCC action was taken. (First Report and Order, paragraph 2.) Later in the same order, the FCC indicated its intent to transfer certain unspecified N11 administrative duties to the North American Number Plan Administrator (NANPA) once that administrator was hired. However, the FCC also made a partial delegation of authority to the states. Paragraph 37 of the First Report and Order provides:

We also leave with local jurisdictions in the first instance the discretion to determine whether 311 should be used locally to reach other government services, as the Department of Justice has suggested. Local jurisdictions can better determine whether this code could or should be used for access to services in addition to non-emergency police services. We find that state public utilities commissions, in conjunction with state and local governments, can address any conflicting requests for use of 311 (for example situations in which city and county law enforcement agencies

both request 311 implementation in the same geographic area) better than us.

(Footnote omitted.) Thus, the FCC delegated to the states the locally-oriented issues like conflicting requests for use of 311, at least until the North American Numbering Plan Administrator was hired. That administrator has since been hired, so the scope of the Board's jurisdiction to resolve 311 geographic disputes is unclear.

The situation with respect to 211 and 511 is even less clear. For example, the FCC assigned 211 to community information and referral services in its "Third Report and Order and Order On Reconsideration" in the same docket, issued on July 31, 2000 (the Third Report and Order). In assigning 211 for this use, the FCC said that it was acting in a similar manner as it did in the assignment of 311. (Third Report and Order at paragraph 21.) The FCC recognized that the class of potential 211 providers is even broader than the 311 service providers, increasing the possibility of conflicting requests, but the only guidance the FCC offered is that "[w]e expect community service organizations to work cooperatively to ensure the greatest public use of this scarce resource." (Id.) The FCC did not expressly delegate any authority to the Board regarding use of 211 for community information and referral services. However, the FCC did say it was acting on 211 in a manner similar to its actions with respect to 311. Thus, it is possible the FCC will delegate to the states the task of resolving conflicting local claims for 211, but it appears no such delegation has been made to date. The parties will be asked to file testimony

addressing the authority for and the reasonableness of the proposed tariff language referring these potential customer disputes to the Board for resolution.

Another issue the Board will ask the parties to address concerns the proposed indemnification language of Section 10.11.3.A.2.o(3) (and the matching sections for 311 and 511 service). The proposed language would require each N11 subscriber to indemnify Qwest in a wide variety of actions. The scope of this requirement may be unreasonable when applied to entities providing services that are closely tied to the public interest.

These are only examples of some of the issues presented by the terms and conditions of Qwest's proposed tariff. Qwest's direct testimony should offer support and justification for each of the proposed tariff provisions.

Qwest's price regulation plan contemplates that the Board will complete its review of any proposed tariff relating to nonbasic communications services within 90 days of the filing date, see Section IV.C.3. This requirement may not apply to this tariff if the Board concludes the other N11 services should be classified as basic communications services. Nonetheless, the Board will establish a procedural schedule that will bring this matter to a conclusion by December 23, 2002, consistent with Qwest's filing of these rates as nonbasic services. Because the available time is so limited, the Board will be unable to grant extensions of time in this docket absent the most compelling circumstances.

IT IS THEREFORE ORDERED:

1. Pursuant to Section IV.C.2 of Qwest's price regulation plan, the rates and charges proposed in TF-02-498 are suspended for investigation of the prices, terms, and conditions proposed therein. The matter will be identified as Docket NO. RPU-02-9. The remaining terms and conditions proposed in TF-02-498 will become effective on the proposed effected date of October 24, 2002, subject to revision or modification at the conclusion of this proceeding.

2. The procedural schedule in this matter will be as follows:

a. Qwest and any intervenors supporting Qwest's proposal shall file any prepared direct testimony, with supporting exhibits and workpapers, on or before October 17, 2002. At a minimum, such testimony shall address each of the issues discussed in this order.

b. The Consumer Advocate Division of the Iowa Department of Justice and any intervenors opposed to Qwest's proposed tariff shall file testimony, with supporting exhibits and workpapers, on or before November 4, 2002.

c. Qwest and any intervenors supporting Qwest's proposal shall file rebuttal testimony, with supporting exhibits and workpapers, on or before November 13, 2002.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on November 22,

2002, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa.

Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made. The Board has reserved one day for this hearing; if any party believes that one day will not be sufficient, the party should notify the Board at the earliest opportunity by means of an appropriate pleading.

d. Any party desiring to file a brief may do so on or before December 4, 2002.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five

days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions should be served by facsimile transfer or by electronic mail, in addition to United States mail.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30th day of September, 2002.